IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff,	) Criminal Action) No. 21-mj-188)
vs.	) DETENTION HEARING)
Ryan Samsel, Defendant.	) Washington, DC) June 4, 2021) Time: 2:15 p.m.)

TRANSCRIPT OF DETENTION HEARING
HELD BEFORE
THE HONORABLE JUDGE ZIA M. FARUQUI
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

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Proceedings reported by audio recording.

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THE COURTROOM DEPUTY: This is magistrate case 21-188, the United States of America versus Ryan Samsel. The defendant is present by video. This matter is set for a detention hearing.

Parties please introduce yourselves for the record, starting with the government.

MS. RUSSO: Good afternoon, Your Honor. April Russo on behalf of the United States.

MS. PASQUALINI: Good afternoon. Elizabeth Pasqualini on behalf Mr. Samsel.

PRETRIAL SERVICES: Christine Schuck with pretrial services.

THE COURT: Thank you, everybody.

So let's work our way backwards. Ms. Pasqualini, I wanted first to begin with you and see if -- we had spoken of (unintelligible) on behalf of the government, just to try to get a grip what was going on with medical treatment services not being provided to the defendant. Has anything improved on that front, or are we in the same place or -- what can you tell me?

MS. PASQUALINI: Your Honor, I've been trying to get in touch with counsel for Rappahannock. Today at 1:42 I got an email from him -- maybe 1:40; 1:40. And he said this: That Mr. Samsel is housed in a cell in the bottom tier and is sleeping on the bottom bunk, and that he has only one cellmate,

which is what he has told us previously, Mr. Samsel.

He said Mr. Samsel has been receiving medical care -- which Mr. Samsel would suggest is not accurate -- and is scheduled to see a neurovascular surgeon on June the 8th for a consultation. He notes, though, however -- and Mr. Samsel was not aware of this -- but the Rappahannock jail requested approval for this from the United States marshals at least ten days ago, but has not heard back from them. And apparently per the arrangement, all medical treatment sought or planned for Samsel must be reviewed and approved by the United States Marshal Service.

Then he goes on to say, Let me know if you need any help, maybe you should talk to the marshals. I asked him, do you have any specifics about what he meant by medical care that Mr. Samsel has been receiving? He says he's been seen by the jail's doctor. I think they have, actually, a certified nurse practitioner; they're still qualified. And, again, he mentioned the business about the neurosurgeon.

He says he doesn't have any records or anything. And then he said if we needed those, that he needed a court order, Mr. Samsel would have to sign something. And I respond that had Mr. Samsel will already signed those papers, but he would be happy to sign them again, if need be.

THE COURT: Thank you. Appreciate you being able to facilitate that. So here's kind of my thoughts about the

process, before we get into the full detention hearing. There is one thing on the front end, I was hoping to hear from you, Ms. Russo, and then in lieu of actually going through the whole proceeding, I wanted to see if there was, perhaps, a path that we could go up to resolve this.

So I just want to be clear, we've had -- in terms of whether detention hearing was appropriate, we've had a bit of litigation in other courts about that. I think that, you know, the complaint here charges a violation of (unintelligible), but it doesn't state whether or not the government is seeking the enhancement under (b). And there's allegations of serious conduct here, so I suspect that maybe -- but I just want confirm -- that both the government and another judge, Chief Judge Howell, as well as Judge Lamberth and Judge Bates, have had some writings on this, and the general belief is that -- the general belief is that it has to be seeking that (b) enhancement in order for this to become a crime of violence. But I just want to pause here for a minute.

MS. RUSSO: Yes, Your Honor, we are seeking that enhancement because there was bodily injury to Officer 1 in this case, Your Honor. There's also an argument here by the government that the barricade that were pushed into the officers constituted a dangerous weapon. So, there are two different basis for that enhancement here.

THE COURT: Okay. Well, I think that that is the

initial conduct, and perhaps the second (unintelligible) and not consider that. I think that is a basis to go forward. I just want to make sure that I was buttoned up on that.

Now, I just want to understand, kind of, the goal here, because this is a pretty unique order. The defendant is not seeking to be released out in the public, he's seeking to be released to another facility, as I understand it.

Ms. Pasqualini?

MS. PASQUALINI: That's correct, Your Honor, Mr. Samsel has in his possession a letter from the Pennsylvania Board of State Parole, giving an updated date, a max date, which is 8-22 of '22, would be his maximum date. I can represent to the Court comfortably and confidently, when you are charged with an offense in Pennsylvania and you are on state parole, barring extremely unusual circumstances, they keep you incarcerated in the jail until your new charge has been resolved one way or the other.

So, I can state with confidence that in addition to the max date of 8-22 of '22, Mr. Samsel is subject, should he be convicted of anything, he's subject to lose his -- what's referred to as street time, the time that he's been at liberty, which is approximately two years, which state parole can tack back onto that. And they are allowed to, kind of, proactively hold him. And so, theoretically, I think that they can hold him even longer than the August of that '22 date.

THE COURT: Is there a detainer right now that is out relating to that, or no?

MS. PASQUALINI: Yes. He has been detained, I think, since the day, maybe, perhaps, after he was arrested. I believe the FBI agents originally contacted his parole officer to get his address.

And so, no, he is absolutely detained, both in this matter and as a result of his Pennsylvania State Board of Probation and Parole.

THE COURT: Ms. Russo, I would like to hear from you. My resolution is that 3142(i) allows temporary release, potentially. So after a finding of detention is appropriate, 3142(i) says that an order of the court of the United States or requested transfer government -- let's see. The judicial officer may permit the temporary release of the person in custody of the United States marshal or other appropriate person, to the extent the judicial officer determines such release necessary for preparation or purposes of defense or other compelling reason.

And so my thought here -- and by mine, I mean Ms. Blaine's, I have to give her credit for her proposed solution -- is the temporary release, the temporary release into the Pennsylvania authorities. Once he's back there, you know, there would be a detainer put on him for this, because he still hasn't been released, but he would still be detained

under this matter. If at any moment he were to be released from the Pennsylvania authorities, he would come back to the federal court.

So I just want to hear, before we get into everything, that you (no audio) and if you need some time to think about it and come back another time, that's fine, too. I didn't mean to put you on the spot. You can think about -- I'm just trying to think about, kind of, a way to handle this. I mean, I think -- I read your pleading, it's very thorough.

You know, I think that certainly under *Munchel*, you know, there is a -- quite a bit of facts here that give me concern about dangerousness. And the defendant's criminal history poses some concerns as well. And so for those reasons, I understand why, that, you know, I think that there is -- there's a good argument to be made for dangerousness.

I believe that, again, the defendant is not asking to be released out into the public. So I'm just trying to see if there's a way, where he can get better medical care at this other facility and still be detained as a backstop, that's what I'm trying to do. So if you think that's possible, if you have another idea, Miss Russo, I would like to hear from you.

MS. RUSSO: Judge, yeah, I would need to look into this more. I know when this has been invoked before, for example, in the COVID 19 context, there wasn't a clear idea of how this would work in terms of when the defendant would be

placed back into custody. And so I hear your idea that essentially if he were to be released on the parole case, that he would then go back into federal custody. I'm just not sure how that would work practically. So I would want to look into that possibility a little bit more.

THE COURT: Two thoughts, and I think one would probably be to talk to the pretrial service. But I don't know if we need to, but we can certainly -- or you all can work to put a detainer in, in addition, so when he's on a temporary release -- and I think, you know, then again, in terms of insurance for that, I'm quite certain that the defendant would say under oath, and I'm sure Ms. Pasqualini would agree, that if, you know, for some reason he's released, that he would immediately self-surrender. I feel confident on just that. But we could have the additional detainer. But it would take some time to look into it and see if there's some other way. But, I would like to at least explore that.

MS. RUSSO: Yes, I'm happy to look into that, Your Honor, and check in with my office about that as well and what the position would be. I also have -- the victim did wish to make a statement regarding release. So I'm happy to -- if we decide to delay this so that we can look into those issues, I'm happy to provide that statement at a later time, or today, whatever Your Honor would prefer on that front.

THE COURT: A written statement? The person is

not --

MS. RUSSO: Correct, Your Honor. She provided a statement by email just about an hour ago and asked me to read it out loud today.

THE COURT: I'm inclined to have that on the record. That's fine. Please go ahead.

MS. RUSSO: Do you want me to proceed with that today, Your Honor?

THE COURT: Yes, that's fine.

MS. RUSSO: Okay. Okay. Your Honor, the victim writes, "On January 6th" -- she writes a statement to the Court and to Mr. Samsel, she said: "On January 6 you and a group of others purposely set out to break through our police line. You purposely came into the west front of the Capitol and you purposely knocked me down. When you do that, when you set out with a purpose in mind to injure another human being, you're not only committing assault, but you are a thief. You steal someone's ability to have control over their own body and lead a normal life.

"You have stolen moments away from me that I can't get back. You stole my ability to be with my fellow officers while mourning the loss of my friend, Sicknick, as I was not able to be fully mobile at that time. You stole months of me working alongside the country's most dedicated police officers, a job that I love and work hard at. You stole my ability to be

present at important events due to the physical and psychological trauma that you imparted on me and my coworkers. And now you're asking to be set free.

"When will we be set free? When will we be set free of the memories and scars of that day? When will I be free and full again? Free of the fear that my brain injury will cause me embarrassment at the best of circumstances, and further injury at the worst. Because of this I am asking that Ryan Samsel not be released. No more women should have to fear injury at his hands."

She did express to me, Your Honor, she is not back to full-time work at this time because of her injuries that were sustained on January 6th. Mr. Samsel was not the only one that imparted those injuries. I want to make that clear. And she is still having issues and seeing doctors. Unfortunately, she is fainting at random times, does not understand why that's happening, has never had that happen before. And is still having some other side effects that make it impossible for her to go back to duty as a Capitol police officer the way that she had prior to January 6th.

THE COURT: Okay. Thank you for sharing that on the record. Ms. Russo please extend appreciation to the victim from the Court. Brave spirit to come forward and let us hear what she's saying.

I will also note, although we've not talked about

this, Mr. Samsel -- in the past we've talked about, he appreciates your fairness in trying to find a fair resolution to resolve this matter and how you made sure that he's treated fairly. And so I appreciate that, you know, you are both ensuring fairness in the prosecution, but also for victims. Thank you for your continued work, Ms. Russo.

Again, I think where we are today is that I do believe, and continue to believe detention is appropriate, but I want, you know, indication, I think, to make sure that we are doing it in a way that is not excessively punitive, and that if Mr. Samsel is -- can receive better care, which I think by all accounts, in another facility, understood his previous medical conditions, I would like to continue to explore that option.

So, Ms. Pasqualini, I assume from your perspective that this sort of proposed resolution, where there be a temporary release to the state authorities, and he stays there. If at any point that that would expire, that he would then come back to the federal authority, that that would be satisfactory from your perspective?

MS. PASQUALINI: Yes, Your Honor, it would. And I certainly would be inclined, as would Mr. Samsel, should he be released, he would certainly turn himself in.

I will tell you, there's a victim's program that notifies people about seven days before people are going to be released, if they're going to be released from state prison.

So we would know ahead of time. As an officer of the court, I would certainly share that both with Ms. Russo, with the Court. So if anybody was going to -- you know, needed to readdress that detention, we could do it at that time --

THE COURT: Okay. Mr. Samsel --

MS. PASQUALINI: -- before it happened. Sorry.

THE COURT: No, I understand.

Mr. Samsel, do you understand kind of what we're talking about here today? The idea is for you to go back and check to see what she thinks (unintelligible) trying to find a solution where we can be fair to both sides. I appreciate, you know, Ms. Pasqualini continues to work to try to make sure you're getting -- as does Ms. Russo, to make sure you're getting appropriate care, and that it sounds like there's a facility for you to remain in custody, but that you can receive it at another facility. So we'll see if we can figure that out and come back maybe -- we'll pick a date next week, if that's possible.

Mr. Samsel?

THE DEFENDANT: There's no way I could just go to the Pennsylvania state prison and let them do it? I mean, if I'm detained there?

THE COURT: That's exactly what we're trying to figure out, is there a way that we can send you to the Pennsylvania facility and so that you can be detained there?

We're just trying to find out mechanically what works with that, kind of, federal system; we're not just releasing people to state facilities, but we're trying to find a way to do that.

MS. RUSSO: Your Honor, I just want to raise two issues. I will check on this with my office, because we had not discussed this as a possibility before. But, one thing I know is that there's not going to be a comfort level with Mr. Samsel self-surrendering. So we would need to make sure that -- and I don't know what my office's position is going to be, or my position is going to be, but if there -- we would oppose anything that would allow him to self-surrender back into federal custody from state custody. I know that much, because there is a concern -- and even in my motion, I sort of alluded to this in my opposition.

But there is definitely a concern about a particular witness that provided information about Mr. Samsel and we do not want there to be any risk that this witness be harmed in the interim with him potentially self-surrendering at any point, particularly because there witness, you know, would be in the vicinity of where he would be released to.

And then the second concern that I want to raise is just that -- obviously Mr. Samsel is getting credit towards whatever sentence he receives in federal court right now. I believe that he would not get that credit if he was released on this case. So, I just want to raise that as, you know,

obviously something for us to all be aware of, is that I don't believe he would get credit for that.

MS. PASQUALINI: Sure. And on that note, I will tell you, that if he is -- even if he is in the state prison -- and certainly nobody wants him to have to self-surrender. My proposed solution is that, you know, a week before, whatever, he's going to be released, we will be notified and the Court could then -- or your office, the marshals, however it mechanically happens, put the detainer on. If he is in -- even if he's in state prison and he has any type of detainer from the federal court, the Pennsylvania Probation and Parole will not give him time credit towards his -- either the maximum sentence or any kind of time hit consequence that he gets for -- if he gets convicted of anything.

So it becomes nothing time for him. He gets no credit, certainly he understands, towards -- towards his federal sentence. The only interest I have in making there not be federal detainer until right before he would be released, is that if it isn't done that way, there will be no time -- jail time credit applied to any case that he has while he is housed in Pennsylvania. It's weird parole rules up here, but that's how they do it.

THE COURT: Okay. I think Ms. Russo is talking about on the front end, the initial concern, right, Ms. Russo? That you don't want him to self-surrender going out, or did you mean

coming back, or both? I mean, both is --

MS. RUSSO: Yes. Either we -- I know that the government is not comfortable and I am not comfortable with any situation in which Mr. Samsel would be out in the public and required to turn himself in. We would want him to remain in custody no matter what. Because we are concerned, even a short amount of time of release, with the consequences to this particular witness, but also to the public would be.

THE COURT: So at some point I just need to hear back from you, we can pick a date, we can try to see what you can suss out in terms of -- since -- start on the front end of getting the defendant to be in a detention facility. Is that something that the Pennsylvania authorities -- if they lodged a detainer, then I don't think he's able to be released. If you're able to follow up on that, then that's great, and we'll get an answer.

On the back end, again, we can always enter a detainer. I hear Miss Pasqualini saying that you prefer, Ms. Pasqualini, that we don't enter a detainer until further down the road, I guess is what you're saying?

MS. PASQUALINI: Yes. And we certainly are not asking that he be released and be able to self-surrender. We're just asking that the detainer not be logged, the federal detainer not be logged until shortly before he theoretically would be released. So that way it's still -- he's not getting

released, but he didn't get the credit towards the Pennsylvania sentence while he's there.

THE COURT: I think we can flag both issues. I think -- go ahead, Ms. Russo, if you want to. But I think we should just, you know, do whatever homework we all can separately and then reconvene.

MS. RUSSO: I'm wondering, Judge, if it would be helpful if we had someone from the United States marshal service at the next hearing. One, for any sort of logistics related to the thought process under 3142(i) but, two, also to address Ms. Pasqualini's point about whether all medical requests have to go through them, and the concern she raised initially, at the beginning of this hearing.

THE COURT: Sure. I could reach out to the U.S. marshal and see if he has somebody here. But, also happy to hear if you're able to provide -- find anybody from your end. So we can both try.

MS. RUSSO: That sounds good. I'll reach out, Your Honor.

MS. PASQUALINI: What generally happens is Pennsylvania is notified that a temporary release order has been issued and that they have to come and get Mr. Samsel; technically, within 30 days. Sometimes it takes a little bit longer than that for them to come and get him. But, the transporting of Mr. Samsel would be done by Pennsylvania. The

rules, they generally have to come and pick him up.

THE COURT: Okay. Great. Well, let's just talk and see what we can figure out.

MS. PASQUALINI: Excellent.

THE COURT: So when do you want to reconvene? Ms. Russo, how much time do you think would be helpful?

MS. RUSSO: I think if we could schedule towards the end of next week, that would be helpful to the government.

THE COURT: Do you want to just say the 11th, make sure we have enough time?

MS. RUSSO: I think that's enough time.

THE COURT: Ms. Pasqualini, does that sound fine by you?

MS. PASQUALINI: It does. If we could do that, maybe, in the morning on the 11th, that would be great. I'm also free the whole day of the 10th. I just -- the afternoon of the 11th starts to get dicey for me.

THE COURT: Just so we have Rappahannock. I think the mornings -- Ms. Lavigne-Rhodes, do you want to set the afternoon of the 10th?

THE COURTROOM DEPUTY: Yes. I think they can only do hearings between 1 and 2:30. That's what they had available today. I can double check.

They can only be scheduled after 1 p.m.

THE COURT: And you can't do after 1 p.m.,

Ms. Pasqualini?

MS. PASQUALINI: That's correct. I could probably do, like, 3:30.

MS. RUSSO: That would work for the government.

THE COURTROOM DEPUTY: We have a prelim --

THE COURT: What's that?

THE COURTROOM DEPUTY: We have a prelim at 3.

THE COURT: Yeah, I don't think that will go. That's okay.

THE COURTROOM DEPUTY: Okay.

THE COURT: You think Rappahannock can do 3:30?

THE COURTROOM DEPUTY: Yes. I will put in a request right now. They may not have it. I may have to give everyone a call or email to switch the times a little bit. But, it may work.

THE COURT: What about on Thursday? What time do they usually do these?

THE COURTROOM DEPUTY: It just depends what they have scheduled, and they let us know if they have any availability, so --

THE COURT: Yeah, great. Let's try for 3:30. If not, then we'll be in touch by email with everybody about that issue. I can do it in a minute order.

MS. RUSSO: Also, Judge, that 3 o'clock prelim is mine, and it is getting continued, so -- if that's helpful.

THE COURT: It's helpful when the facts mirror what I just said. Thank you. Okay. So --

THE COURTROOM DEPUTY: Your Honor, can we push it up to be safe, just a little bit?

THE COURT: The 3 o'clock?

THE COURTROOM DEPUTY: Um-hum. Maybe 2:30?

MS. PASQUALINI: That's where I have a problem. Sorry.

THE COURT: Can you do 3 o'clock, Ms. Pasqualini, or not? Let's stick with 3:30.

THE COURTROOM DEPUTY: Let's stick with 3:30. I'll see what this is.

MS. PASQUALINI: Can I split the baby with you and do 3:15?

THE COURT: Let's say 3:15.

THE COURTROOM DEPUTY: Okay.

THE COURT: Why don't you say 3 o'clock, and that way by the time defendant gets there and things like that, we'll be on by 3:15. Does that sound good?

THE COURTROOM DEPUTY: Yes.

UNIDENTIFIED SPEAKER: That's why you get the black robe.

THE COURT: Absolutely. So we'll plan for 3, Ms. Pasqualini, and you'll be able to get on. I know you're juggling.

So, Mr. Samsel, does that make sense? We're going to come back in one week and try to sort this out then.

THE DEFENDANT: Yes, sir.

THE COURT: Thanks for your patience, Mr. Samsel. We'll be in contact with the marshals office, as well, I will. And I'll continue to reach out to the general counsel at the jail. Don't think that we've forgotten about you.

Ms. Pasqualini, in her email (unintelligible), Ms. Russo is there as well, and I am as well. So don't think we're forgetting. Okay?

THE DEFENDANT: Yep. Thank you.

THE COURT: Ms. Russo, anything else on your end?

MS. RUSSO: No, Your Honor. Thank you very much.

THE COURT: Okay. The parties excused. Take care. Have a good day.

MS. RUSSO: Thank you.

* * *

CERTIFICATE

I do hereby certify that the foregoing is a true, correct and complete transcript of the audio-recorded proceedings in this matter, audio recorded on June 4, 2021, and transcribed from the audio recording to the best of my ability, and that said transcript has been compared with the audio recording.

Dated: June 4, 2021

/s/

Janice Dickman
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